



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Mohammed S. Aljanaby, M.D.**

**Decision and Order**

On February 10, 2017, the Assistant Administrator, Division of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Mohammed S. Aljanaby, M.D. (hereinafter, Registrant<sup>1</sup>), of West Hartford, Connecticut. Show Cause Order, at 1. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, on the ground that he does not have authority to handle controlled substances in Connecticut, the State in which he is registered with DEA. *Id.*

As to the Agency's jurisdiction, the Show Cause Order alleged that Registrant possesses a practitioner's registration for schedules II through V, and that his registered address is 74 Park Road, West Hartford, Connecticut. *Id.* The Order further alleged that Registrant's registration "expires by its own terms on June 30, 2017." *Id.*

As to the substantive ground for the proposed action, the Show Cause Order alleged that "[o]n **November 15, 2017**, the State of Connecticut Medical Examining Board revoked [his] license to practice medicine due to [his] (1) inappropriate physical and/or sexual conduct with one or more female patients; and (2) false statements on [his] Connecticut medical license renewal application." *Id.* (emphasis added). The Show Cause Order also alleged that the

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<sup>1</sup> Notwithstanding that Dr. Aljanaby is now an ex-registrant, he is referred to as Registrant throughout this Decision.

Board's "order remains in effect." *Id.*<sup>2</sup> The Order further asserted that Registrant's registration was subject to revocation based on his lack of state authority. *Id.* at 2.

The Government attempted to serve the Order to Show Cause on Registrant through a variety of ways. These included: 1) mailing by first class mail addressed to him at his registered address; 2) a Diversion Investigator (DI) going to his registered address, where he was told that Registrant "had not worked there for a very long time" and his current location was unknown; 3) the DI going to Registrant's purported residence on Laird Drive in Bristol, Connecticut where no one answered the door;<sup>3</sup> 4) mailing the Show Cause Order by Certified Mail, Return Receipt Requested, addressed to him at his registered address; 5) mailing the Show Cause Order by Certified Mail, Return Receipt Requested, to his purported residence address; 6) mailing the Show Cause Order by Certified Mail, Return Receipt Requested, to a second property in Bristol, Connecticut, which is purportedly owned by Registrant; 7) mailing the Show Cause Order by Certified Mail, Return Receipt Requested, to an address in New York State where he receives his property tax bill from the Town of Bristol; and 8) email sent to an address obtained from a public access database maintained by Thomson Reuters, which also corresponds to the email address Registrant provided to the Connecticut Board. GX 3, at 1-2 (DI Declaration). The first mailing was accomplished on February 10, 2017; the other attempts at service were made on February 22-23, 2017. *Id.*; *see also* GX 4 (Declaration of Chief Counsel Analyst).

With the exception of the mailing to his registered address (where he no longer worked), each of the other mailings was returned to the Government and marked as undelivered. GX 3, at

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<sup>2</sup> The Show Cause Order also notified Registrant of his right to request a hearing or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. Show Cause Order, at 2. The Order also notified Registrant of his right to submit a Corrective Action Plan. *Id.* at 2-3 (citing 21 U.S.C. § 824(c)(2)(C)).

<sup>3</sup> According to the Connecticut Medical Examining Board's Order, when the Board attempted to served Registrant at this address its mailing was returned and marked: "Return to sender, No Such Street, Unable to Forward." GX 3, Appendix C, at 3.

2. The Government represents, however, that the attempt to email the Show Cause Order did not generate an error or undeliverable message.

Of note, several courts have held that the emailing of process can, depending on the facts and circumstances, satisfy due process, especially where service by conventional means is impracticable because a person sequesters himself. *See Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1017-18 (9th Cir. 2002); *Snyder, et al. v. Alternate Energy Inc.*, 857 N.Y.S. 2d 442, 447-449 (N.Y. Civ. Ct. 2008); *In re International Telemedia Associates, Inc.*, 245 B.R. 713, 721-22 (Bankr. N.D. Ga. 2000); *see also Richard C. Quigley*, 79 FR 50945 (2014); *Emilio Luna*, 77 FR 4829, 4830 (2012). Given the multiple attempts by the Government to serve the Show Cause Order by conventional means, including by mailing it to the address where he receives his property tax bills, I conclude that the Government's use of email satisfies its obligation with respect to service of the Show Cause Order. *See, e.g., Jones v. Flowers*, 547 U.S. 220, 226 (2006) (due process does not require actual notice but only “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950))).

On May 8, 2017, the Government submitted a Request for Final Agency Action. Therein, it represents that Registrant did not request a hearing or submit a written statement while waiving his right to a hearing. The Government thus seeks a final order revoking Registrant's registration.

I deny the Government's Request for an Order of Revocation. As support for the proposed revocation, the Government submitted a copy of the Board's Order revoking Registrant's state license, which states that it was actually issued on the “15<sup>th</sup> day of November,

2016.” GX 3, Appendix C, at 9. However, as noted above, the Show Cause Order alleges that the Board revoked his state license “[o]n November 15, 2017.” See GX 2, at 1. I need not decide, however, whether this typographical error renders the Show Cause Order defective as this case is now moot.<sup>4</sup>

As noted above, the Show Cause Order alleges that Registrant’s registration was due to expire on June 30, 2017. *Id.* According to the registration records of the Agency of which I take official notice,<sup>5</sup> Registrant’s registration did, in fact, expire on June 30, 2017. Moreover, Registrant has not filed a renewal application, whether timely or not.

It is well settled that “[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.” *Ronald J. Riegel*, 63 FR 67132, 67133 (1998); *see also William W. Nucklos*, 73 FR 34330 (2008). Furthermore, because Registrant did not file a renewal application, there is no application to act upon. *See Nucklos*, 73 FR at 34330. Accordingly, because there is neither a registration, nor an application, to act upon, I hold that this case is now moot.

## **ORDER**

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Mohammed S. Aljanaby, M.D., be, and it hereby is, dismissed.

Dated: July 14, 2017.

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<sup>4</sup> Had Registrant requested a hearing, the Government could have corrected its error as to the date of the Board’s Order by motion. And by offering the Board’s Order to support a motion for summary disposition, the Government would have refuted any claim of prejudice. *Cf. United States v. Cina*, 699 F.2d 853, 857 (7th Cir. 1983) (holding in criminal prosecution that trial court’s amendment of the alleged commencement date of conspiracy charge by two years did not “affect[] a ‘material element’ of the . . . charge, causing prejudice to the defendant”). Furthermore, as long as the Board’s Order was still in effect, the date of its Order would not be material.

<sup>5</sup> *See* 5 U.S.C. 556(e); 21 CFR 1316.59(e).

**Chuck Rosenberg,**

*Acting Administrator.*

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